REMARKS

Claims 1-52, 73-87, and 89-97 are pending in the application. Claims 73-87 stand rejected under 35 U.S.C. 112, Second Paragraph as being indefinite. Claims 1-52, 73-84 and 89-95 stand rejected under 35 U.S.C. 103(a) over Risen Jr. et al, U.S. Patent No. 6,018,714 ("Risen"), in view of Heckman et al Pre-Grant Pub No. 2003/0061075 ("Heckman"). Claims 85-87 and 96-97 stand rejected under 35 U.S.C. 103(a) over Risen, in view of Heckman, and further in view of Borghesi et al. U.S. Patent No. 5,950,169. These rejections are respectfully traversed for the reasons set forth below.

With regard to the Examiner's Section 112, Second Paragraph rejection, claim 73 has been amended to recite that the processor processes the data model rather than the processor being "coupled to" the data model. It is respectfully submitted that the rejection of claims 73-87 under 112, Second Paragraph has been obviated and should be withdrawn.

Independent claims 1, 73, and 89 are patentable over Risen in view of Heckman. These claims are directed to a computerized system and method which determines a value associated with a woody trees and shrubs, a change in the value of the woody trees and shrubs over a period of time, and a risk-of-loss to the woody trees and shrubs attributable to an eligible event that can occur over the time period. The system and method utilize the computer to determine a cost of an indemnity against a loss to the woody trees and shrubs from the eligible event over the time period based on the change in value and the risk-of-loss.

The Examiner acknowledges that the Risen reference does not disclose a system or method for landscape architectural objects. It is respectfully pointed out that Heckman also does not disclose a system or method that relates to landscape architectural objects. Nor does either reference disclose a system or method that relates to woody trees and shrubs.

Heckman discloses methods for rating and structuring crop insurance. Crops are not architectural objects at all, much less woody trees and shrubs. Indeed, Heckman is directed to the field of agriculture, which is a different field than the present invention.

Crops differ fundamentally from woody trees and shrubs in many material aspects, and the analysis of their value and risk of loss is completely different. A tree can have a lifespan of over 100 years, and typically appreciates with age. Crops are rotating consumable annual or

seasonal goods. Woody trees and shrubs, to which the present claims are now limited, are non-consumable and non-rotating, and are simply a fundamentally different asset which requires a fundamentally different analysis than the analysis set forth in the Heckman reference. It is noted in this regard that, from an accounting perspective, crops are treated as an inventory item and woody trees and shrubs are treated as fixed assets.

Moreover, the presently claimed method, which includes steps of determining the value of an object which appreciates annually, and a step of assessing the change in that value over time, would be of no use in the field of crop insurance in which the insured goods are harvested and consumed seasonally. The claims have further been amended to clarify the appreciation aspect of the claimed method.

The claims have also been amended to clarify that the risk-of-loss determination is based upon an inspection. The cited prior art further fails to suggest such a risk of loss determination based upon an inspection. It is respectfully submitted that such inspections would not be warranted in the crop insurance field to which the Heckman reference is directed, wherein one crop of goods is roughly equally susceptable to loss as the next crop of goods.

The Federal government, through the USDA's Risk Management Agency (RMA) and the Federal Crop Insurance Corporation (FCIC), a body which is operated and managed by the RMA, has limited the term 'crop' to a finite list of agricultural commodities for which a commercial market exists, i.e., oranges, apples.

On the other hand, the term 'landscape architectural objects' as understood in the art, as recited in the present claims, and as disclosed in the present specification, and as understood in the art, specifically do not include crops, which are neither architectural objects nor landscape architecture.

The claims have been further amended in this respect to specify that the claimed landscape architectural objects comprise woody trees and shrubs.

Rating risk and providing insurance coverage for a marketable commodity such as crops, that are produced in order to be traded and subsequently consumed, is entirely different from doing so for a living organism such as a tree that is a fixed asset which appreciates over time. The methods of valuing these different asset classes, determining the risk factors that can impact their value and numerous other parameters that determine the risk-of-loss and an indemnity against a loss, are intrinsically different and the RMA, as well as federal legislation pertaining to

crops, i.e., The Farm Bill, define 'crops' to the exclusion of anything that would constitute a landscape architectural object. The essence of crop insurance focuses on the risks borne by a producer of agricultural production. Ascertaining the production value of a crop, as per Heckman's disclosed method, is fundamentally distinguished from the present invention, which determines for example the insurable value of a stand of Oak trees, or a singular Oak tree, that provides aesthetic and other value to a property. There is no correlation between the two and the Application is purposed to implement a regime for rating, valuing and insuring fixed and living landscape assets based on their intrinsic value.

The FCIC, a body operating in strict compliance with Federal legislation, and which is tasked with providing crop insurance to American producers, uses Actual Production History (APH) prices to determine the values of crops. Heckman is directed to a derivative of that methodology to structure crop insurance more efficiently. Trees and landscape are valued in an entirely different method and the Council of Tree and Landscape Appraisers (CTLA) Guide sets forth a methodology for determining value of trees and shrubs that is based on their genus, species, height or trunk diameter, as well as condition, location and species ratings. There is no similarity in these methods and there is no logical derivation of one method from the other.

The Examiner states in Paragraph 12 of the Office Action that one of ordinary skill in the art would "combine the teachings of Risen and Heckman in order to determine insurance coverage for a land or field". Applicant disagrees for the reasons set forth above. Furthermore, it is respectfully submitted that the present invention relates to systems and method for insuring woody trees and shrubs, which are neither a land nor a field.

Each element of each of applicants' independent claims, as well as the preamble of each, recites landscape architectural objects, which have now been amended to be limited to woody trees and shrubs. Because Heckman relates to crops, which are not architectural objects at all and are certainly not woody trees and shrubs, Heckman teaches none of those elements. Risen, as recognized by the Examiner, also does not teach systems and methods for landscape architectural objects, and therefore also teaches none of those elements.

It is well established that, in order to show obviousness, all limitations must be taught by the prior art. In Re Royka, 180 U.S.P.Q. 580, 490 F.2d 981 (CCPA 1974); MPEP § 2143.03. It is error to ignore specific limitations distinguishing over the references. In Re Boe, 184 U.S.P.Q.

38, 505 F.2d 1297 (CCPA 1974); In Re Saether, 181 U.S.P.Q. 36, 492 F.2d 849 (CCPA 1974); In Re Glass, 176 U.S.P.Q. 489, 472 F.2d 1388 (CCPA 1973).

For the above reasons alone, Risen and Heckman cannot render the claimed invention obvious. Furthermore, a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. KSR Int'l Co. v. Teleflex, 127 S.Ct 1727, 1741 (2007). As former Chief Judge Markey of the Federal Circuit has stated, "virtually all inventions are 'combinations', and … every invention is formed of 'old elements' …. Only God works from nothing. Man must work with old elements." H.T. Markey, *Why Not the Statute?* 65 J. Pat. Off. Soc'y 331, 333-334 (1983). The factfinder should be aware of the distortion caused by hindsight bias and must be cautious of arguments reliant upon ex post reasoning. KSR Int'l Co. v. Teleflex, 127 S.Ct at 1742. In determining whether a claimed invention is an obvious combination of prior art references, it must be shown there is an apparent reason to combine the known elements in the fashion claimed. Id. at 1741. To facilitate review, this analysis should be made explicit. Id.

The Examiner has further not shown any need or problem known in the field and addressed by the present application that can provide a reason for combining the elements of the Risen and Heckman references in the manner claimed. KSR Int'l Co. v. Teleflex Inc., 127 S.Ct. 1727, 1742 (2007). It is " important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does. This is so because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known." KSR v. Teleflex, 127 S.Ct. at 1731.

It is submitted that claims 1-52, 73-87, and 89-97 are in condition for allowance, and Notice to that effect is respectfully solicited. In the event that the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, she is courteously requested to contact applicant's undersigned representative.

AUTHORIZATION

The Commissioner is authorized to charge any additional fees associated with this filing, or credit any overpayment, to Deposit Account No. **50-2638**. If an extension of time is required,

this should be considered a petition therefor.

Respectfully submitted,

/Richard E. Kurtz/Reg. #33,936

Richard E. Kurtz
Reg. No. 33,936
Attorney for Applicant
GREENBERG TRAURIG
2101 L Street, NW Suite 1000
Washington, DC 20037
(407) 420-1000
E-mail: kurtzr@gtlaw.com

Filed: August 4, 2010